



House of Representatives

General Assembly

File No. 375

February Session, 2002

Substitute House Bill No. 5061

House of Representatives, April 8, 2002

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE EMPLOYEES' REVIEW BOARD.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 5-202 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2002*):

3 (a) Any employee who is not included in any collective bargaining
4 unit of state employees and who has achieved a permanent
5 appointment as defined in subdivision (19) of section 5-196 may appeal
6 to the Employees' Review Board if [he or she] such employee receives
7 an unsatisfactory performance evaluation or is demoted, suspended or
8 dismissed, or is aggrieved as a result of alleged discrimination, or
9 unsafe or unhealthy working conditions or violations involving the
10 interpretation and application of a specific state personnel statute,
11 regulation or rule. Such employee must have complied with
12 preliminary review procedures, except as otherwise provided in
13 subsection [(k)] (l) of this section. Such an appeal shall be submitted to
14 the board [within] not later than thirty days [of] from the completion

15 of the final level of the preliminary review procedure, provided the
16 first level of the procedure shall have been initiated no later than thirty
17 calendar days from the date of the alleged violation, except that in
18 cases of dismissal, demotion or suspension the grievance must be
19 submitted directly to the third level of the procedure and shall have
20 been initiated no later than thirty calendar days from the effective date
21 of such action.

22 (b) Any group of employees that is not included in any collective
23 bargaining unit of state employees may file an appeal as a group
24 directly with the Employees' Review Board if such group of employees
25 is laid off or dismissed, or is aggrieved as a result of alleged
26 discrimination, or unsafe or unhealthy working conditions or
27 violations involving the interpretation and application of a specific
28 state personnel statute, regulation or rule, provided each member of
29 such group has achieved a permanent appointment, as defined in
30 subdivision (19) of section 5-196. Such an appeal shall be submitted to
31 the board no later than thirty calendar days from the specific incident
32 or effective date of action giving rise to such appeal.

33 ~~[(b)]~~ (c) Upon receiving an appeal, the board shall assign a time and
34 place for a hearing and shall give notice ~~[thereof]~~ of such time and
35 place to the parties concerned. The hearing panel shall not be bound by
36 technical rules of evidence prevailing in the courts. If, after hearing, a
37 majority of the hearing panel determines that the action appealed from
38 was arbitrary or taken without reasonable cause, the appeal shall be
39 sustained; otherwise, the appeal shall be denied. The hearing panel
40 shall have the power to direct appropriate remedial action and shall do
41 so after taking into consideration just and equitable relief to the
42 employee or group of employees and the best interests and
43 effectiveness of the state service. The hearing panel shall render a
44 decision ~~[within]~~ not later than sixty calendar days from the date of the
45 conclusion of the hearing.

46 ~~[(c)]~~ (d) The employee or group of employees in any such case shall
47 be furnished, upon ~~[his]~~ request, with a copy of the transcript of the

48 proceedings before the board. The chairman of the board shall
49 establish a fair and reasonable fee per page to be charged for such
50 transcript which fee shall not exceed the fee per page for a transcript
51 charged by court reporters for the judicial district of Hartford.

52 [(d) Within] (e) Not later than ten days [of] from the issuance date of
53 a decision by a hearing panel sustaining an appeal, the appointing
54 authority of the employee shall take such measures as are necessary to
55 comply with the remedial action directed by the hearing panel.

56 [(e)] (f) An employee or group of employees laid off or dismissed by
57 reason of economy, lack of work, insufficient appropriation, change in
58 departmental organization or abolition of position may file an appeal
59 with the board only on the grounds that the order of layoff or
60 dismissal has not been determined in accordance with the provisions
61 of section 5-241, provided such employee or group of employees has
62 initiated the third level of the preliminary review procedure [within]
63 not later than thirty calendar days [of] from the effective date of such
64 layoff or dismissal.

65 [(f)] (g) All matters involving examination, including application
66 rejection, type of examination or results, compensation for class or
67 classes, establishment of a new class or classes, classification of a
68 position, occupational group or career progression level, compliance
69 with health and safety standards and the Connecticut Occupational
70 Safety and Health Act or alleged discrimination in cases where an
71 appeal has been filed with the Commission on Human Rights and
72 Opportunities, shall not be appealable under this section.

73 [(g)] (h) The first level of the preliminary review procedure
74 preparatory to the filing of an appeal from an alleged grievable action
75 under subsection (a) of this section other than dismissal, demotion or
76 suspension shall be the aggrieved employee's supervisor or
77 department chief or other employee as designated by the employee's
78 appointing authority. Such aggrieved employee shall present the
79 employee's grievance in writing on a form developed by the Secretary
80 of the Office of Policy and Management and the Employee Review

81 Board which form shall contain a statement of the date the alleged
82 violation occurred and the relief sought in answer to the grievance.
83 The first level designee shall give said designee's answer to such
84 employee [within] not later than seven calendar days from the date the
85 grievance is submitted to said designee or [within] not later than seven
86 days from the date of a meeting convened for the purpose of reviewing
87 the grievance, in which case such meeting shall be convened [within]
88 not later than seven calendar days from the date the grievance is
89 submitted.

90 [(h)] (i) The second level of the preliminary review procedure
91 preparatory to the filing of an appeal from an alleged grievable action
92 under subsection (a) of this section other than dismissal, demotion or
93 suspension shall be the aggrieved employee's appointing authority or
94 designated representative. Such employee, upon receiving a response
95 at the first level which [he] the employee deems to be unsatisfactory,
96 may proceed to this level by presenting the same form containing the
97 first level answers [within] not later than seven calendar days from the
98 date the answer was given at the first level. The appointing authority
99 or designated representative shall answer such employee [within] not
100 later than seven calendar days from the date the grievance is received
101 or [within] not later than seven calendar days from the date of a
102 meeting convened for the purpose of reviewing such grievance, in
103 which case such meeting shall be convened [within] not later than
104 seven calendar days from the date such grievance is received.

105 [(i)] (j) The third level of the preliminary review procedure
106 preparatory to the filing of an appeal from an alleged grievable action
107 under subsection (a) of this section including dismissal, demotion or
108 suspension shall be the Secretary of the Office of Policy and
109 Management or the secretary's designated representative. The
110 employee, upon receiving a response at the second level which [he] the
111 employee deems to be unsatisfactory, may proceed to this level by
112 presenting the same form containing the first and second level answers
113 [within] not later than seven calendar days from the date the answer
114 was given at the second level, except in the case of a dismissal,

115 demotion or suspension in which case such employee must present the
116 form, completed but without answers at lower levels [within] not later
117 than thirty calendar days [of] from the effective date of such action.
118 The Secretary of the Office of Policy and Management or the
119 secretary's designated representative shall reply to such employee
120 [within] not later than thirty calendar days from the date such
121 grievance is received or [within] not later than fifteen calendar days
122 from the date of a meeting convened for the purpose of reviewing such
123 grievance, in which case such meeting shall be convened [within] not
124 later than thirty calendar days from the date such grievance is
125 received.

126 [(j)] (k) Employees shall be entitled to have representation of their
127 own choosing at any or all levels of the review or appeal procedure.
128 No verbatim records shall be required in the preliminary procedure
129 and no oaths or affirmations shall be administered.

130 [(k)] (l) Any state officer or employee, as defined in section 4-141, or
131 any appointing authority shall not take or threaten to take any
132 personnel action against any state employee or group of state
133 employees in retaliation for [such employee's] the filing of an appeal
134 with the Employees' Review Board or a grievance with any level of the
135 preliminary review procedure pursuant to this section. An employee
136 or group of employees alleging that such action has been threatened or
137 taken may file an appeal directly with the board [within] not later than
138 thirty days of knowledge of the specific incident giving rise to such
139 claim.

140 [(l)] (m) Either the Secretary of the Office of Policy and Management
141 or any employee or group of employees aggrieved by a decision of the
142 Employees' Review Board may appeal [therefrom] from such decision
143 in accordance with section 4-183. The board may intervene as a party
144 in any appeal of its decision. Any employee or group of employees
145 [who] that prevails in a decision of the Employees' Review Board shall
146 be entitled to recover court costs and reasonable attorney's fees if such
147 decision is appealed by the Secretary of the Office of Policy and

148 Management and affirmed by the court in such appeal.

149 Sec. 2. Subsection (a) of section 5-240 of the general statutes is
150 repealed and the following is substituted in lieu thereof (*Effective*
151 *October 1, 2002*):

152 (a) An appointing authority, subject to any regulations issued by the
153 Secretary of the Office of Policy and Management, may reprimand or
154 warn an employee in the classified service under the appointing
155 authority's jurisdiction or suspend such an employee without pay or
156 with reduced pay for an aggregate period not exceeding sixty calendar
157 days in any calendar year. For any employee not included in any
158 collective bargaining unit of state employees, any written reprimand or
159 warning shall be included in the employee's personnel file and, if not
160 merged in the next service rating, shall be expunged after twelve
161 months from the date of reprimand or warning. Any such written
162 reprimand or warning may be reviewed in accordance with the
163 procedures established in subsections [(g) and] (h) and (i) of section 5-
164 202, as amended by this act.

165 Sec. 3. (*Effective from passage*) Notwithstanding the failure to file an
166 appeal with the Employees' Review Board within the time limitations
167 specified by section 5-202 of the general statutes, as amended by this
168 act, and notwithstanding that the subject of such appeal has once been
169 considered by the Claims Commissioner, by the Employees' Review
170 Board, by the General Assembly or in a judicial proceeding, Ludmil
171 Chotkowski is authorized to submit his appeal to the Employees'
172 Review Board, provided he submits such appeal to the board not later
173 than October 1, 2002.

This act shall take effect as follows:	
Section 1	<i>October 1, 2002</i>
Sec. 2	<i>October 1, 2002</i>
Sec. 3	<i>from passage</i>

Statement of Legislative Commissioners:

A new section 2 was added to the bill amending section 5-204 in order to redesignate references to existing subsections (g) and (h) of section 5-202 for accuracy of reference.

LAB *Joint Favorable Subst. C/R*

JUD

JUD *Joint Favorable Subst.-LCO*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Fund-Type	Agency Affected	FY 03 \$	FY 04 \$
GF - Cost	Admin. Serv., Dept	Potential Minimal	Potential Minimal
GF - Cost	Comptroller	Potential Significant	Potential Significant

Note: GF=General Fund

Municipal Impact: None

Explanation

This bill results in potential minimal costs to the Department of Administrative Services (DAS) and in potential significant costs¹ to the state. The bill allows additional appeals to be brought to the Employees' Review Board².

The bill 1) allows groups of non-unionized state employees to appeal to the Employees' Review Board and 2) allows Ludmil Chotkowski to submit his appeal to the board. Potential minimal costs could result to DAS from handling additional cases. The average cost of hearings for an appeal over the last four years is \$5,949.

Potential significant costs could result to the state to the extent that the appeals are successful and damages are awarded. The number of group appeals cannot be determined. The appeal of Ludmil Chotkowski could result in significant costs because he is seeking lost

¹ OFA defines significant cost as annual cost in excess of \$100,000.

² Per CGS Section 5-201, the Employees' Review Board is assigned to the Department of Administrative Services (DAS) for administrative purposes only. It is budgeted as an Other Current Expenses account in DAS. The board functions to resolve grievances and disciplinary action issues of permanent state employees not covered under collective bargaining.

wages and interest related to the termination of his employment in 1976 by the Veterans' Home and Hospital (now the Department of Veterans' Affairs). Awards would be paid through an Adjudicated Claims account administered by the Office of the State Comptroller.

OLR Bill Analysis

sHB 5061

AN ACT CONCERNING THE EMPLOYEES' REVIEW BOARD**SUMMARY:**

This bill allows a group of state employees who are not included in any state employee union to appeal directly as a group to the Employees' Review Board under certain circumstances. By law, individual non-unionized employees can, under most circumstances, bring their appeals to the board only after going through a three-stage grievance procedure. The bill extends the hearing and related provisions that apply to individual appeals to group appeals.

The bill allows Ludmil Chotkowski to submit his appeal to the board, so long as he does so by October 1, 2002, notwithstanding the fact that (1) he failed to file a timely appeal with the board and (2) the appeal was considered by the board, the Claims Commissioner, the legislature, or in a judicial proceeding.

EFFECTIVE DATE: Upon passage for the provision affecting Ludmil Chotkowski; October 1, 2002, for the remaining provisions.

GROUP APPEALS TO THE BOARD

By law, an individual non-unionized permanent state employee can appeal to the board after going through a grievance procedure. The procedure usually involves his immediate supervisor, his appointing authority (e.g., his agency commissioner), and the Office of Policy and Management (OPM) secretary. (The latter two officers can name designees to hear grievances.) An individual can grieve a wide range of issues. Cases involving dismissal, demotion, or suspension must go directly to the third stage of the grievance procedure.

The bill allows groups of non-unionized permanent employees to appeal as a group directly to the board if the group (1) has been laid off or dismissed or (2) is aggrieved by (a) alleged discrimination, (b) unsafe or unhealthy working conditions, or (c) the interpretation and application of a specific state personnel statute, regulation, or rule.

(Individual employees can also grieve these issues.) The group must submit its appeal to the board within 30 days of the specific incident or effective date that caused the complaint.

The bill extends provisions that apply to individual appeals to group appeals. Among other things, these provisions; (1) require the board to name a panel to hear the appeal and require the panel to issue its decision within 60 days after the hearing; (2) bar state officers or employees from retaliating against employees who appeal to the board; and (3) allow employees or the OPM secretary, if aggrieved by the board's decision, to appeal it to the courts.

By law, individual employees can only appeal layoffs and dismissals that arise from certain causes on the grounds that the order of the dismissal or layoff has not complied with relevant state law. The causes are economy, lack of work, insufficient appropriation, change in departmental organization, or abolition of a position. By law, the employee can only appeal to the board under these circumstances if he has initiated the third stage of the grievance procedure within 30 days of the layoff or dismissal. The bill extends these provisions to group appeals, but it is unclear how a group would meet the 30-day requirement since it would not go through the grievance procedure.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute Change of Reference

Yea 13 Nay 1

Judiciary Committee

Joint Favorable Report

Yea 40 Nay 0